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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 346 of 2006
Date of decision: 26.3.2007

Aman Shiv Mandir Trust (Regd.) through Chairman Mr.Jagdish SinghTanwar

...Appellant

Versus

Commissioner of Income-tax, Chandigarh.

...Respondent

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CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.S.K.Mukhi, Advocate for the appellant.

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RAJESH BINDAL, J.

This appeal has been preferred under Section 260-A of the Income Tax Act, 1961 (for short "the Act") proposing the following substantial questions of law arising out of order dated 5.10.2005 passed by the Income Tax Appellate Tribunal, Chandigarh Bench-A, Chandigarh (for short "the Tribunal), in ITA No.748/Chandi/2000:-

> "1. Whether, on the facts and in the circumstances of the case and in view of legal provisions the ITAT was justified in concurring with CIT who has erred in denying registration u/s 12A and exemption u/s 80G to the appellant trust by erroneously holding that apparently the appellant trust has not been performing the charitable activities as per its aims and objects for which it was formed which action of the CIT is illegal and thus needs to be quashed being in clear contradiction to the findings by this Hon'ble Court as so

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held in the case of SONEPAT HINDU EDUCATIONAL AND CHARITABLE SOCIETY VS. CIT AS REPORTED IN 278 ITS 262 (P&H), for which the appellant hereby humbly pray as above.

2. Whether on the facts and in the circumstances of the case and in view of legal provisions the CIT has erred in denying the registration and exemption u/s 80G to the appellant trust by erroneously holding that apparently the appellant trust has not been performing the charitable activities as per its aims and objects for which it was formed and also other basis being not relevant and not in consonance with the facts and evidences on record which action of the CIT/ITAT is illegal and thus needs to be quashed being based on various factors which falls outside the purview of action of CIT being that falling under the jurisdiction of AO conducting scrutiny assessment under section 143 (3) of the Income Tax Act, 1961?

3. Whether on the facts and in the circumstances of the case, the findings of the CIT in denying registration u/s 12A and exemption u/s 80G to the appellant trust and concurrence to the same by the ITAT is perverse and thus needs to be quashed."

Briefly the facts of the case are that the assessee applied for registration of society under Section 12A of the Act and exemption under Section 80G of the Act on December 21, 1999. Though the assessee claimed to have carried out various activities during the preceding period such as organizing Bhandaras, helping needy patients etc. but perusal of the income and expenditure account did not show any expense towards the same. No detail of any help provided by the assessee to the poor persons was furnished. From a perusal of profit and loss statement, it is evident that entire receipts were kept in the fixed deposits and interest was being earned thereon. During last three years no expenditure, whatsoever, was incurred on any of the object of the trust. As far as source of funds with the trust was concerned, trust claimed that the same was by way of deductions from the

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wages being paid to the employees engaged by Shri J.S.Tanwar, who was running an agency in the name of M/s Aman Securities and Detective Services, which employs thousands of workers. The plea raised is that it was a voluntary contribution by employees, who were quite low paid otherwise. No evidence could be led for any expense made for the objects of the trust during the last five years. It was also found that contribution received by the trust was not voluntary. The discrepancies came to the notice of the revenue when in spite of not being registered under Section 12A of the Act, the assessee claimed its income to be not taxable by filing form 15H. The entire money collected, running into lacs of rupees, was kept in the bank in the form of fixed deposits. Accordingly, finding no substance in the claim made by the assessee and the trust having not been found to be genuine, the registration application was rejected. In further appeal before the Tribunal, against the order of Commissioner of Income Tax (for short 'the CIT'), the Tribunal upheld the order passed by the CIT. The factors weighing with the authorities for refusing registration were summarized in the following terms:-

i) That the assessee has filed the application for registration late by 4 years and 6 months.

ii) That assessee has not furnished any evidence to establish that any activity for furtherance of the objects of the trust had been carried out from the date of the creation of the trust.

iii) That no expenditure of whatsoever nature has been spent by the trust for the objects of the trust right from its creation to the decision of the CIT.

iv) That the assessee had deposited Rs. 76,40,788/- and earned huge interest on these deposits; the assessee trust had filed form No.15-H with the bank certifying that no tax was payable by it to avoid deduction of tax at source and, therefore, the assessee had given a false declaration.

v) That there was no proof that the amount collected by the assessee was from voluntary contributions that too for the corpus of the trust.

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vi)That the assessee, it appears, had made application for registration as a charitable institution only when the ITO had started inquiries about the registration of the trust u/s 12A after discovering the declaration filed in form No.15-H.

vii)That the Income-tax Department has detected huge deposits in the name of the main trustee and the latter had gone to the Settlement Commission..

viii)That 75% of the income of the trust was not utilized for charitable purposes in India.

ix)That assessee had taxable income and the same had not been utilized for any charitable purposes.

x) That no ingredients are made out for the assessee to be a charitable trust."

Learned counsel for the assessee submitted that the authorities have gone wrong in rejecting the claim of the assessee merely because the assessee had kept the collected amount in fixed deposits in the bank as the same does not change the nature of the assessee from being a charitable trust. The amount was being collected for purchase of land etc. However, he could not dispute the fact that out of collection nothing was spent during the last five years on any of the charitable purposes. Even collection of money from low paid employees, which is said to be voluntary, also did not sound to reason. It was also found that the application filed by the assessee was delayed by more than four years. Not only this, huge amount of fixed deposits was found in the name of trustee, who had later approached the Settlement Commission, obviously admitting his guilt. Keeping in view the totality of circumstances and the intention and conduct of the assessee including the managing trustee, the claim made by the assessee was not found to be genuine. The same plea, which was rejected by both the authorities below has been advanced by the counsel for the assessee. However, at the time of hearing, learned counsel for the assessee could not substantiate any of the plea raised by him to persuade this court to take a view different from what has been taken by the Tribunal on appreciation of material on record. The findings are in no manner perverse.

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Accordingly, while concurring with the reasoning recorded by the authorities below, we do not find any merit in the appeal and dismiss the same.

(Rajesh Bindal)
Judge

March 26, 2007 **(M.M.Kumar)**
Pka **Judge**